

**IN THE COURT OF THE CIVIL JUDGE & JMFC., JEWARGI*****Present*****Sri. Kashinath V. Uppar****B.Sc. LL.B.**

Civil Judge &amp; JMFC., Jewargi.

**O. S. No.107/2025****Dated on this the 04<sup>th</sup> day of December-2025****ORIGINAL SUIT No.107/2025**

**PLAINTIFF :** Mahantesh S/o Shankreppa Padashetty,  
Age: 28 years, Occ: Agriculture,  
R/o Bilwar village, tq: Yadrami,  
Dist: Kalaburagi.

**(By. Sri.S.B.K., Advocate)**V/s.

**DEFENDANTS:**

1. Madiwalappa S/o Shankreppa Padashetty  
Age: 67 years, Occ: Agriculture,  
R/o Biral (K) village, tq: Yadrami,  
Dist: Kalaburagi.
2. Sharadabai W/o late Ayyappa Padashetty  
Age: 60 years, Occ: Agriculture,  
R/o Bilwar village, tq: Yadrami,  
Dist: Kalaburagi.
3. Shankar S/o Yankappa Waddar,  
Age: major, Occ: Agriculture,  
R/o Yevoor village, tq: Hunasagi,  
Dist: Yadagir.
4. Ningamma W/o Shantappa Pujari,  
Age: major, Occ: not known,  
R/o Halli-Sagar, village, tq: Shahapur,  
Dist: Yadagir.
5. Laxmibai W/o Beerappa Pujari,  
Age: major, Occ: Agriculture,  
R/o Muradi village, tq: Sindagir,  
Dist: Vijayapur.

**(D-2 By Sri. B.B., Advocate)**

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**PARTIES TO I.A. No.1**

**APPLICANT/** : Mahantesh S/o Shankreppa Padashetty,  
**PLAINTIFF** V/S

**OPPONENT/** : 1. Madiwalappa S/o Shankreppa Padashetty &  
**DEFENDANTS** Others

i.	Provision under which the application is filed	U/o 39 Rule 1 and 2 R/w Sec.151 of CPC
ii.	Relief sought for	Temporary Injunction
iii.	The date on which the application is filed	Along with suit
iv.	Number of the application	IA No.1
v.	The date of which the objections are filed by different opponents	14-08-2025
vi.	The date on which the orders were passed on the said application	05-12-2025.

**ORDER ON I.A No.I FILED BY PLAINTIFF**  
**U/O 39 RULE 1 & 2 R/w Sec.151 OF C.P.C.**

1. The plaintiff has filed I.A No.1 under Order 39 Rule 1 & 2 R/w Sec.151 of C.P.C., seeking temporary injunction to restrain defendants from alienating, mortgaging or creating any type of charge over the suit properties, pending disposal off the suit.

2. The plaintiff sworn to the affidavit stating that, the suit property is the ancestral and joint family property of plaintiff and defendant No.1 and 2 and there is no any partition and separate possession with metes and bounds in family. That the mutation entries nominally

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carried out the in the name of defendants accordingly, defendant No.2 husband and defendant No.1 is alienate the suit property in favour of other defendants. The alienation made by the defendants not binding upon the plaintiff. The plaintiff and defendants are the joint owners and possessor of the property. The defendant by taking undue advantage of entries nominally standing in their name. They are negotiate and trying to alienate the behind the back of plaintiff to deprive the legitimate share of the plaintiff. The plaintiff got prima-facie case balance of convenience lies in favour of plaintiff. If suit property alienate it will be lead multiplicity of litigation and also plaintiff prays that, the contents of plaint averments be read as part and parcel of this affidavit. The plaint averment as under:

3. The father of plaintiff, husband of defendant No.2 and defendant No.1 are the brothers each other. Since the property is joint and ancestral property, the plaintiff and defendants No.1 and 2 are the joint owners and possessors and there is no any partition with the plaintiff and defendants are entitled 1/3rd share each in the suit property respectively. That, the father of plaintiff died about 14 years back, and the husband of

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defendant No.2 namely Ayyappa Padashetty died in the year 2015-16, the defendant No.1 is alive, all the jointly cultivating the suit property since during the life time of father plaintiff and plaintiff and husband of defendant No.2. That the plaintiff and defendant No.1 and 2 having cordial relation between them no disputes found during the life time of Ayyappa Padashetty joint possession and cultivation is continued as the nature of property is joint owners and possession and there is no any partition with metes and bounds and entries nominally standing in the name of defendants. That the defendants 3 to 6 is stranger to the family of plaintiff and defendant No.1 and 2 behind the back of plaintiff without obtaining the signature of the plaintiff illegally sold the property behind the back of plaintiff vide registered document No.53/2006-07 dated 12-04-2006 and vide document registered No.6281/2024-25 and vide document No.6283/2024-25 vide document No.6285/2024-5. The defendant No.1 sold the property in favour of three persons that is defendant No.4 to 6 and husband of defendant No.2 sold the property in favour of defendant No.3 without consent of the plaintiff to the deeds thus the sale-deeds executed by the husbands of defendant No.2 in favour of defendant

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No.3 and defendant No.1 sold the defendants 4 to 6 are not binding on the share of plaintiff and null and void. Defendants are trying to alienate the suit property. Hence, plaintiff constrained to file this suit.

3. After suit summons defendant No.2 appear before the court and filed written statement and memo stating that, the contents of written statement is treated as objection to I.A.No.1. The defendant No.2 denied the entire plaint averment in toto. Defendant No.2 further denied that, suit property is ancestral and joint family property of plaintiff and defendant No.1 and 2. Further defendant No.2 admitted that, 2<sup>nd</sup> defendant husband died on 08-03-2014 and plaintiff father by name Ningappa and 1<sup>st</sup> defendant are the natural brothers to each other in relation and they are son of one Shankrappa Padashetty. But 2<sup>nd</sup> defendant husband is the son of one Shivalingappa Padashetty. The plaintiff and 1<sup>st</sup> defendants are the distant blood relative of 2<sup>nd</sup> defendant. Defendant No.2 further contended that, there is no specific pleadings as to how the suit property becomes ancestral joint family property or details of plaintiff linen descendants. So question as to suit property is an ancestral joint family property of plaintiff, 1<sup>st</sup> and 2<sup>nd</sup> defendant does not arise. Portion of

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suit property measuring 08 acre 33 guntas was separate property of 2<sup>nd</sup> defendant husband, as he inherited the same from his parents. Due to his family legal necessarily he sold the portion of suit property measuring 06 acres 08 guntas in favour of 3<sup>rd</sup> defendant via registered sale-deed documents No.53/06-07 dated 12-04-2006. 2<sup>nd</sup> defendant husband died on 08-03-2014. After his death portion of suit property measuring 02 acres 25 guntas was inherited by 2<sup>nd</sup> defendant and her children. 2<sup>nd</sup> defendant is enjoying the same as joint owner along with her children. Defendant No.2 further contended that, the land Sy.No.50 measuring 20 guntas stood in the name of plaintiff and land Sy.No.78 measuring 11 acres stood in the name of plaintiff mother both are situated at village Bilwar. These properties has not been included in this suit intentionally. Hence, suit of the plaintiff suffers from non-inclusion of other family properties and liable to be dismissed on this ground alone. With these grounds defendant No.2 prays to dismiss the I.A.No.1.

4. On considering the I.A.No.I, affidavit, documents, the points that would arise for my consideration are as under:



### POINTS

1. Whether the plaintiff/applicant has made out prima facie case for grant of temporary injunction?
2. Whether the balance of convenience is lies in favour of plaintiff/applicant?
3. Whether the irreparable loss and injury would be caused to the plaintiff/applicant if the temporary injunction is refused?
4. What order?
5. Learned Counsel for plaintiff produced record of rights of suit property, and argued that plaintiff has made out prima-facie case and balance of convenience lies in favour of plaintiff. If temporary injunction is not granted plaintiff would be put to heavy and untold hardship. Therefore, temporary injunction may be granted to the plaintiff.
6. Per-contra, defendant No.2 counsel argued that, the relation of the plaintiff and husband of defendant No.2 is denied. The suit property is separate property of husband of 2<sup>nd</sup> defendant after death of husband of 2<sup>nd</sup> defendant. The 2<sup>nd</sup> defendant become a absolute owner. Therefore, he prayed to reject the application.

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7. My answer to the above points are as under:

Point No.1 : In the Negative.

Point No.2 : In the Negative.

Point No.3 : In the Negative.

Point No.4 : As per final order for the following:

### **REASONS**

8. **Point No.1 to 3:-** To avoid the repetition of the fact, these points are taken together for common discussion.

It is well established and settled position of law that the following propositions are to be established in order to invoke the jurisdiction of the court to grant an interlocutory order of injunction U/O 39 Rule 1 and 2 of C.P.C, (1) plaintiff has to establish a prima facie case, (2) the balance of convenience is in favour of the party seeking the relief and (3) that the party seeking the relief will suffer irreparable injury if injunction is refused. The ingredients are to be established by the party who seeks injunction in his favour. The grant of injunction being a discretionary relief, the party should come to court with clean hands and place all the materials before the court so that, the court will be satisfied about the prima-facie case in favour of the

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party seeking the order.

9. It is also necessary to mention here that “Prima-facie case” not to be confused with “prima-facie title” which has to be established on evidence at the trial. Prima-facie case is a substantial question raises bonafide which needs investigation and a decision on merits.

10. Now keeping in mind the aforesaid aspects let us consider the present application in hand. I have considered the IA, IA affidavit. As per pleadings of hte plaintiff, the father of plaintiff and defendant No.1 and the husband of 2<sup>nd</sup> defendant by name Ayyappa is the son of one Shankrappa Padashetty. The suit property is ancestral and joint family property of plaintiff and defendant No.1 and 2. The defendant No.1 and 2 alienate the suit property in favour of defendant No.3 to 6. The plaintiff have 1/3rd legitimate share in the suit schedule property. The counsel for plaintiff produced the record of rights of property land bearing Sy.No.6/1, measuring 10 acre 33 guntas, out of 02 acre 25 guntas, is standing in the name of Ayyappa S/o Shivalingappa Padashetty and 02 acres 38 guntas standing in the name of defendant No.1. As per

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contention of defendant No.2 that, the father of plaintiff by name Ningappa and the 1<sup>st</sup> defendant is the brother in relationship and they are the son of one Shankrappa Padashetty. But the husband of defendant No.2 by name Ayyappa Padashetty is the son of one Shivalingappa. Defendant No.2 produced the school transfer certificate of Ayyanna S/o Shivalingappa. On perusal of ROR of suit schedule property land bearing Sy.No.6/4, wherein the name of husband of defendant No.2 shown as Ayyappa S/o Shivalingappa Padashetty. Therefore, the objection raised by the defendant No.2 is sustainable. On perusal of records this court is of the opinion that, plaintiff have not made out a prima-facie case against the defendant No.2 and when there is no prima-facie material the other two aspects, i.e., balance of convenience and irreparable loss will not be considered. Therefore, I answer Point No.1 to 3 in the Negative.

11. **Point No.4:-** In view of my findings on Points No.1 to 3, I proceed to pass the following:

### **ORDER**

I.A.No.1 filed by the plaintiff under

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Order 39 Rule 1 & 2 R/w Sec.151 of CPC, is hereby dismissed against defendant No.2.

For steps against defendant No.1 and No.3 to 6.

Call on 15-12-2025.

(Dictated to the Stenographer directly on the computer, typed by him, script revised and corrected and then pronounced by me in the Open Court on this 04<sup>th</sup> day of December-2024).

**(Kashinath V. Uppar)**  
**Civil Judge & JMFC,**  
Jewargi.

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